IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 618 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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UNITED INDIA INSURANCE CO.LTD. - Appellant(s)
Versus
DINESHBHAI VITHALBHAI PATEL & 2 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,
MS DAKSHA A SHAH for Defendant(s) : 1,
MR HARSHAD J SHAH for Defendant(s) : 1,
MR GI DESAI for Defendant(s) : 2 - 3.
MR MAHESH N BHATT for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 11/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 23.10.96 passed by the Motor Accident Claims Tribunal(Main), Vadodara in MACP No. 1108 of 1989 whereby the Tribunal awarded an amount of Rs. 82,000/- by way of compensation payable to the original claimants by the original opponents.

2. The original claimants, being the legal representative of the deceased had filed claim petition seeking compensation to the tune of Rs. 1,00,000/- in

respect of the vehicular accident which occurred on 17.04.89 on Bodeli-Naswadi road while the deceased was going on scooter bearing no. GRE 1556 riding pillion. At that time, a tempo bearing no. GRE 7745 coming from the opposite direction in excessive speed and on the wrong side of the road dashed with the scooter thereby injuring the rider and killing the pillion rider. The original claimant being the legal representative of the deceased filed the said claim petition in the said circumstance. The Tribunal after hearing the parties passed the aforesaid award.

3. Learned counsel for the appellant has contended that the Tribunal erred in coming to the conclusion that the deceased had income of Rs. 1500/- per month. He has further contended that the Tribunal failed to appreciate that deceased had lost his wife during his lifetime and the deceased out of love and affection had bequeathed his immovable properties to his nephew.

4. Heard learned counsel and gone through the award of the Tribunal. As far as the contention of the appellant with regard to nephew not being a legal representative is concerned, the Tribunal after considering the various provisions of law more particularly clause © of sub-sec

(1) of Sec. 166 of the MV Act and Section 8 of the Hindu Succession Act, 1956 and the deposition of the original claimant wherein he has stated that from his childhood he used to look after his deceased uncle and that by executing a registered will Ex. 37 in the year 1985 his uncle had made him his heir and the various decisions of the Apex Court and this Court has come to the conclusion that the nephew is also entitled to get the compensation under the MV Act on account of the accidental death of his uncle. I am in complete agreement with the reasonings adopted by the Tribunal. Moreover, the Tribunal after going through the relevant oral and documentary evidence has assessed the monthly income and the quantum of compensation which is just and proper and does not call for any interference.

5. In the premises aforesaid, the appeal is dismissed. No order as to costs.

(K.S. JHAVERI, J.)

Divya//